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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in the territory of the former Yugoslavia

Final periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 42 of Commission resolution 1995/89

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Introduction

1. On 27 July 1995 Mr. Tadeusz Mazowiecki, the Special Rapporteur of the Commission on Human Rights informed the Chairman of the Commission of his decision to resign his mandate. 1/

2. In the present report he gives his findings on events which took place up to the date of his resignation and it therefore concerns questions of violations of human rights and humanitarian law following the fall of Srebrenica.

3. The report also presents the Special Rapporteur's analysis of the development and implementation of the concept of safe areas, and information submitted to him at a recent meeting with various human rights-oriented non-governmental organizations from the Federal Republic of Yugoslavia.

I. SREBRENICA

A. General Remarks

4. This report is based on the findings of a mission of the Special Rapporteur to Tuzla from 22 to 24 July 1995, as well as an investigation conducted by staff of the Centre for Human Rights in conjunction with the Civil Affairs component of the United Nations Peace Forces (UNPF). This investigation involved interviews with displaced persons and discussions with individuals from the Tuzla region, including representatives of cantonal and municipal authorities, local medical institutions and members of the Serb community. Numerous international organizations and local non-governmental organizations active in the area were also contacted, including the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross, Médecins sans frontières (Belgium), the European Community Monitoring Mission, the Tuzla Citizens Forum, and the Helsinki Citizens Assembly. Information was received from a number of journalists. In addition, this report is based on information obtained from interviews with United Nations Protection Force (UNPROFOR) peacekeepers who were present in Potocari and Srebrenica at the time the events described in the report took place.

5. The tragic odyssey of the Muslim people of Srebrenica began with the fall of the enclave on Tuesday 11 July 1995. The expulsion of the entire Muslim population, estimated at between 38,000 and 42,000, took the following forms:

A group of mainly women, children and some non-draft age men went from Srebrenica to the United Nations Protection Force (UNPROFOR) headquarters

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1/ The full text of his letter, giving the reasons for his decision, is reproduced in annex I.

at Potocari. They remained there for a short period before being forcibly removed by bus to the confrontation line in an evacuation organized by the Bosnian Serb forces. 2/

The sick and wounded were transported to Potocari for an initial period and then evacuated to the confrontation line in a medical convoy of UNPROFOR vehicles organized by the Bosnian Serb forces.

A group of mainly draft-age men assembled in a large column and embarked on a journey at least several days from Srebrenica to the confrontation line on foot.

6. The narrative below charts the experiences of those following each of these different routes out of the enclave.

B. The situation in Srebrenica

7. Bombardment of the enclave of Srebrenica began in earnest on Thursday 6 July and by the following Tuesday, the Bosnian Serb forces had advanced into the town. By this time, thousands of women and children had arrived at the UNPROFOR compound seeking protection. There were few men in this crowd. The compound, which was swarming with people, was shelled in the afternoon. People were screaming and crying at the gate, and there were reports of casualties and at least one person killed.

8. An evacuation of these people took place whereby some were driven by UNPROFOR personnel to Potocari in five trucks and the rest followed on foot. Almost 95 per cent of this exodus was comprised of women, children and the elderly. The journey to Potocari was described as completely chaotic, with people hanging onto the sides of the trucks and falling off from exhaustion due to the hot and difficult conditions. The wounded from the hospital were also evacuated to Potocari.

9. There were a number of reports of widespread looting of Muslim homes by Bosnian Serb forces and Serb civilians following the evacuation. People reportedly came from nearby towns and villages to take goods and livestock. Homes were ransacked and the contents taken away in wheelbarrows. Some houses were also reported to have been burnt and mosques destroyed.

C. The situation in Potocari

10. About 25,000 people fled from Srebrenica and the first groups began to arrive in Potocari on Tuesday 11 July. Some 5,000 women and children were housed in the UNPROFOR compound and the remaining 20,000 or so were placed in factory complexes.

2/ Whenever the terms "Bosnian Serb forces" or "Bosnian Serb de facto authorities" are used in this report, reference is being made, unless otherwise indicated, only to Bosnian Serbs who are in the military or civilian service of the de facto administration which has its political headquarters at Pale. In particular, no reference is intended or to be implied to any Bosnian Serbs who are loyal to the Republic of Bosnia and Herzegovina.

11. On the morning of Wednesday 12 July, the Bosnian Serb forces arrived and surrounded the compound with artillery and tanks. In response, the UNPROFOR personnel took up positions encircling the displaced persons. The Bosnian Serb Army instituted an evacuation plan whereby women, children, the elderly and the wounded would be evacuated first. Men between the ages of 16 and 60 were to be separated from the other evacuees. Implementation of this plan for the evacuation of 25,000 people commenced on Wednesday 12 July and took one and a half days to complete, using 300 buses, each capable of transporting 70 persons at a time. A proposal to place one UNPROFOR peace-keeper on each bus was not implemented.

12. There was only a small percentage of men (mostly of non-draft age) among the displaced persons who had fled to Potocari and they were separated from the rest of the group on an ad hoc basis during the course of Wednesday 12 and Thursday 13 July. Bosnian Serb soldiers reportedly came to the factory complexes where the displaced persons were housed and removed men in small groups. Other men, some as young as 15 or as old as 74, were separated from the main group as they tried to board buses with their families. One woman described how her father was beaten with rifle butts and separated from her as she was boarding the bus. She has not seen him since. An international observer described how a father carrying a child was torn away by Bosnian Serb soldiers, leaving the child alone with strangers. These separated men were then taken to a house guarded by Bosnian Serb soldiers.

13. Accounts were also received of young women being abducted. In one reported case, between 8 and 10 women were taken. However, no names of missing women have been made available.

14. Physical violence by the Bosnian Serb soldiers against the displaced persons occurred and in the most extreme cases resulted in death. An international observer described the execution of a civilian man near the place where the buses were standing. He watched as the victim was forcibly removed from a large group of people. A short time later he heard screams and on investigation saw a Bosnian Serb soldier shoot the man in the head. The same incident was seen by another international observer.

15. Other international witnesses recount how they saw and heard various events which led them to the conclusion that executions had taken place. One describes how he saw a man being beaten with rifle butts and then dragged into a house. He then heard one shot and concluded that the man had been killed. Another witness described the same chain of events on two other occasions. There were reports of the sound of shots and screams during the night, particularly from the vicinity of the cornfield behind the house where the men were detained.

16. Three international observers found 9 or 10 dead bodies near a stream. The bodies were all in civilian dress and were found lying face down with their heads almost in the water. There appeared to be gunshot wounds in the back and sides of the bodies. Another observer witnessed 10 men being taken in the direction of the place where these bodies were later found. Two more international observers witnessed the same scene later in the day. A group of

six to seven bodies in civilian clothes was reported to have been seen in another location, accounts varying as to whether death had occurred through the slitting of throats or gunshot wounds.

17. There were many reliable reports that the displaced persons were pushed, kicked and beaten by Bosnian Serb soldiers. Sometimes they were beaten if they did not move quickly enough. On one occasion, the Bosnian Serb soldiers reportedly came into a factory complex, and took away a few men at a time. None of these men came back, except one who returned covered in blood with very serious injuries to his face. Verbal abuse of civilians was also reported.

18. The general condition of the refugees was reportedly very bad. The Bosnian Serb forces brought them food and water on Wednesday 12 July, but according to reports there was not enough to go round. The general atmosphere was one of panic and one international observer present commented that she had never seen so much fear in a group of people.

D. The journey by bus

19. The buses and trucks travelled from Potocari, to the edge of Bosnian Serb-held territory near Tisca. The drive was via Bratunac and Vlasenica and lasted two and a half hours. The displaced persons then walked a distance of approximately six kilometres from the barricades at the confrontation line to Bosnian Government-held territory at Kladanj.

20. At times, the conditions on the journey were extremely uncomfortable. The groups of women, children and the elderly were put on trucks which were covered with plastic. The temperature was very high and there was little ventilation in the trucks. An international observer asked the Bosnian Serb soldiers to lift the tarpaulin so that the people could breathe more easily, but they refused to do so. He commented that the people were herded together like cattle and showed great fear in their eyes.

21. More people were removed during the course of this journey. Most reports concern men being separated. It was reported that three men of about 60 years of age were taken off one bus when a stop was made at Kravica. Still more men were removed at the barricades at the confrontation line. According to one account, a number of men were actually allowed to board the bus at Nova Kasaba. There was also a report that nine women, mainly between the ages of 15 and 20, were taken off a bus at Bratunac.

22. There were many reports that the buses were stopped on the journey by Bosnian Serb soldiers demanding money and jewellery. These demands were usually accompanied by threats of violence. In one case it was alleged that a knife was held to the throat of a baby.

23. The buses were also stoned on the way by Bosnian Serb civilians. In one incident, it was reported that a child was injured on the head by a stone thrown at the bus he was travelling on.

24. Some of those travelling on the buses, report seeing captured men through the window. An international observer and a displaced person saw between 300 and 500 men in a football field at Nova Kasaba. Many were wearing uniforms. One witness saw more than 10 men, naked to the waist, with their hands behind their heads. Another saw a group of about 100 men near Kravica and Konjevic Polje, and one woman reported seeing her brother among a group of 20 to 30 captured men.

25. There were also reports of dead bodies being seen on the journey, particularly on the road between Bratunac, Konjevic Polje and Nova Kasaba. Some of the bodies were reported to be in civilian dress with slit throats or gunshot wounds. One woman reported seeing four dead bodies of civilians during the walk across no mans land to Kladanj.

E. The journey by medical convoy

26. On Wednesday 13 July approximately 65 wounded persons were taken from Potocari in a convoy of seven trucks accompanied by medical staff and UNPROFOR escorts. The convoy was halted at a Bosnian Serb checkpoint near the confrontation line, where Bosnian Serb soldiers demanded that the patients be removed. Some 30 men were removed from the vehicles and only the most seriously disabled were left on board. It was reported that the sick and wounded were beaten, kicked and pushed by the Bosnian Serb soldiers. At least one man was severely beaten with an automatic weapon and a man with a broken leg was made to walk without assistance. The group removed from the vehicles was forced to remain in a field overnight under very cold and uncomfortable conditions. It is alleged that a woman medical assistant with this group was taken away during the night and raped by Bosnian Serb soldiers. Further details are given in section H below. The group was made to walk towards the confrontation line at dawn.

27. The rest of the convoy was ordered back to Potocari but was stopped again at a Bosnian Serb checkpoint where it was forced to remain overnight. It was reported that medical staff were not allowed to treat patients and one died during the night, apparently as a result of lack of medical care. It was reported that Bosnian Serb soldiers took valuables and other possessions from the people in the convoy during the night. The following day the convoy was allowed to go to a local hospital in Bratunac. It was reported that more men were then separated from the group but it is unknown where these patients were taken.

28. The International Committee of the Red Cross was able to evacuate 88 wounded persons from Bratunac and Potocari on 17 and 18 July. When all the wounded were collected in Bratunac on the first day of evacuation, 23 of them were refused authorization to leave. ICRC considers them to be prisoners of war and is seeking permission to visit them.

F. The journey on foot

29. The draft age men of Srebrenica assembled at a hill, Buljim Jaglic, very close to the town on Monday 10 July. They formed part of a very large column of about 15,000 persons which headed out of the town towards Bosnian Government territory. The column was predominantly composed of men. They

were mostly civilians. Between 3,000 and 4,000 were reported to be armed and approximately 10,000 unarmed. There were a few women and children in the group.

30. This column, spanned two or three persons across and stretched back several kilometres. Reports state that it was arranged with armed men in front, then a group of wounded people, then the civilians, and finally a group of armed men. There were also some armed men scattered at the sides of the column.

31. In the course of the journey, this large column became split into many much smaller groups. Later in the journey these smaller groups joined with other groups and travelled together. It is difficult to establish a clear sequence of events since such a large number of people were involved in what amounted to a constant forming and reforming of groups. The witness accounts thus tend to give a piecemeal picture of what took place.

32. Survivors of this journey report attacks and ambushes by the Bosnian Serb forces on groups composed mainly of civilians. 3/ In one shelling incident at Konjevic Polje, the witness described how a shell landed in his group leading to countless dead and wounded. He described the general chaos and witnessing people with arms and legs blown away. He escaped by crossing the river Jadar which became dark with blood and dirt. Another account describes how it was necessary to pass through a heavily mined area which was made even more precarious by the unstable mental state of many of the displaced persons by this stage. The witness reported seeing 15 people killed or injured in this area.

33. A number of accounts describe physical assaults on men who had surrendered and thus had the status of prisoners of war. 4/ Such assaults sometimes led to their death. Various reports describe how the Bosnian Serb forces used megaphones to demand surrender. One man reported that he was in a group, at least one third of which was composed of civilian men, that was targeted on the road between Kravica and Konjevic Polje. His group surrendered and was put in a grassy area beside the road. He then described how the Bosnian Serb soldiers killed people at random, grabbing the hair of

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3/ The question of whether these were military attacks against civilians per se is a crucial one in legal terms. In order to establish a violation of international humanitarian law such attacks must be against civilians. Attacks against combatants are permitted in the course of normal warfare. This poses a problem in the situation in question as the initial column and subsequent splinter groups were comprised of a mixture of civilians and combatants. Thus it would be necessary to determine on a case-by-case basis whether each individual attack on a particular group constitutes a violation of international humanitarian law. An important factor to be taken into account in making this determination is the proportion of civilians to combatants. Combatants who have surrendered are to be considered as prisoners of war and are to be protected under the Geneva Convention relative to the protection of prisoners of war of 1949.

4/ Idem.

the victims and slitting their throats. This particular witness was released because he was under age and put on one of the buses travelling from Potocari. In another account a number of men were lined up against a wall in Nova Kasaba and shot. Further accounts giving the fate of groups of men who surrendered are referred to in section G below.

34. Reports certainly indicate that some of these attacks by Bosnian Serb soldiers were against groups comprised only of Bosnian Government soldiers. Armed combat took place, and witnesses reported that on occasion Bosnian Serb soldiers were killed or captured. 5/

35. Other information to emerge from these testimonies indicates that Bosnian Serb civilians joined the groups and gave misleading directions, leading the Bosnian Muslims into traps. There were also allegations of Bosnian Serbs wearing UNPROFOR uniforms and travelling in UNPROFOR vehicles. One witness reported how Bosnian Serb soldiers wearing UNPROFOR uniforms and pretending to be local UNPROFOR staff urged his group to go to a particular location. He fled from them suspecting that they were imposters.

36. The journey was fraught with danger and took place under very difficult conditions. It lasted at least several days. The people had meagre food provisions to tide them through the journey and were forced to live off the apples and mushrooms they could find in the forest. They also had difficulty in finding drinking water. The great mental distress suffered by many on this journey has been widely reported. There are many accounts of suicide. In one particularly harrowing report, a witness described how a man shot himself in the face but failed to kill himself and pleaded with others to finish the job.

G. The question of mass executions

37. Evidence indicating that summary executions took place has been given throughout the above narrative. In this section information is presented concerning reports that captured men were detained and then executed on a mass scale at various outdoor locations in the vicinity of Srebrenica. It is clear that these allegations cannot be fully verified without access to Bosnian Serb-held territory. However, the following pieces of information appear to be of relevance to this question.

38. An international source states that a prisoner of war assembly point was established by the Bosnian Serb Army near the football ground at Nova Kasaba.

39. An international witness and a displaced person report seeing between 300 and 500 men in a football field at Nova Kasaba. They were mostly wearing uniforms. The displaced person reported seeing a pile of dead bodies nearby.

40. One witness reported that he was in a group of some 2,000 men who surrendered in the village of Kravica (other accounts confirm the report of the capture of such a large number of men). He stated that after capture they were moved to various locations. He described the suffocating heat in the trucks and stated that they were deprived of water to the extent that people

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5/ Idem.

were forced to drink their own urine. He describes how they were beaten with sticks and machine guns and how some were shot while being held in detention facilities. Finally, they were taken to an outdoor location at night. Groups of 5 to 10 men were taken out of the trucks at a time, put in a line and then shot by a group of Bosnian Serb soldiers. The witness noticed that around 100 men had already been shot dead when his turn came. He reported that shots were fired and that a bullet grazed his leg. He lay still for a few hours, pretending to be dead, and then escaped.

41. Two other testimonies describe a similar chain of events to those set out above. However, the exact geographical coordinates cannot be established without more detailed investigation. It is therefore impossible to say whether these reported incidents took place in the football ground at Nova Kasaba, where such atrocities are alleged to have occurred. Indeed, an initial analysis of the eye-witness accounts indicates that they took place at a location further north, in the vicinity of Zvornik.

42. An international source described how, on Saturday 15 July when he was being transferred from Simici to Bratunac, he passed a football ground near Nova Kasaba. On a section of the football pitch, he saw a row of the shoes and rucksacks of an estimated 100 men. Shortly afterwards he saw a tractor with a cart on which there were corpses. Approximately 500 metres further along he saw another row of the shoes and equipment of approximately 20 to 40 people. Here he saw a tip-up truck carrying corpses on an excavator. Finally, he observed a body in the bend of the road.

43. The widely reported aerial photographs taken by the Government of the United States of America and presented to the Security Council show four large patches of freshly disturbed earth and lorry tracks in fields outside Nova Kasaba. Each patch is a 100 square yards in an area believed to be a mass grave. Other photographs apparently show the same field a few days earlier when the soil was undisturbed and there are also other photographs showing some 600 prisoners in the field.

44. As of 14 August 1995, the ICRC reported that it had received 10,000 tracing requests from relatives of those missing following the fall of Srebrenica. Caution must be exercised in drawing conclusions about the numbers missing on the basis of this figure as there may be multiple applications for tracing requests and, furthermore, resolved cases are not always reported to the ICRC. By dramatic contrast, the ICRC has only been able to visit 164 detainees. It is also reported that hundreds of men have been drafted into the Bosnian Government Army but the exact number is unknown.

H. The question of rape

45. A number of rape cases have been registered in Tuzla hospital. In one case a girl of 14 years of age committed suicide after being raped by Serbian soldiers. In another confirmed case, the 19-year-old victim was raped on her way to the confrontation line as part of a medical convoy. According to various accounts, while the convoy was waiting near the confrontation line, some Bosnian Serb soldiers came on board one of the vehicles looking for the sister of a particular Bosnian Government Army officer. One woman testified that she was taken off the bus and questioned about this matter and then

returned to the bus unharmed. It was reported that another woman, who had been working as a medical assistant on the bus, was then taken off. She was absent for some hours and returned in a very distraught state, stating that she had been raped by three Bosnian Serb soldiers. There are other reports of cases of rape and abduction but only a few concrete cases.

I. The situation in Tuzla

46. From about 13 July 1995 the displaced persons started arriving in Tuzla. Even though 11,000 places had been allocated for them in collective centres around Tuzla, the Bosnian Government authorities insisted that all displaced persons be transported to the airbase area. The airbase is dotted with mines and had no shelter, sanitation facilities or water sources for the newly displaced. Although international agencies erected tents and other facilities at the airbase, they could not keep up with the flow of displaced persons. On 14 July, the government authorities agreed to placing the newly displaced in available shelters, and transported those displaced persons who were already at the airbase to the collective centres. By 17 July, it was estimated that some 17,200 displaced had been placed in collective centres while some 5,800 remained at Tuzla airbase.

47. Many of the displaced are people who had already been displaced once or even twice before and had been living in Srebrenica as displaced persons at the time it fell. They are a rural people accustomed to a stable, static lifestyle and the constant uprooting therefore has a particularly traumatic effect. They are disappointed and feel betrayed that the international community failed to protect them despite all the assurances concerning "safe havens".

48. The local authorities are therefore considering the means by which permanent settlements comprising family dwellings can be established in order to give the displaced population some sense of security. This is a means by which community ties and the traditional lifestyle can be re-established.

49. The fate of the menfolk is a cause of great anguish for their relatives and friends. The disappearance of such a huge number of men poses particular practical problems in a male-dominated society where the women are almost wholly dependent on men for their livelihoods. One woman was reported to have committed suicide by jumping into a lake with her two children because her husband was missing.

50. Harassment and physical violence against Serbs in small villages near Tuzla have been reported to the Special Rapporteur by the local authorities, local non-governmental organizations and Serb community leaders. Serbs report feeling threatened by the large number of displaced persons who have settled there. In Simin Han, the houses of several Serb families have been robbed and burned and the local police reportedly did little to stop this. In Jasenice a Serb man was reportedly killed by unknown persons while members of the local police watched. Abuse and evictions have also been reported in other villages. The Mayor of Tuzla and the Canton Governor have condemned this behaviour, given special orders to the police to uphold the law and undertaken measures to compensate Serbs for losses.

J. Conclusions

51. There is significant direct and circumstantial evidence indicating that summary executions took place, both of individuals and small groups of people. On the question of mass executions of large numbers of people at one time, the evidence so far obtained leads to the chilling conclusion that these may have occurred. Further conclusions particularly in terms of the total number executed and the fate of those unaccounted for cannot be drawn without access to the territory under the control of the Bosnian Serb de facto authorities, the examination of the sites in question, the exhumation and examination of corpses which may be found, and until further information is available on those still reported missing.

52. There are credible accounts that women were raped by Bosnian Serb soldiers. Available information indicates that this may not have occurred on a mass scale. However, there may have been an under-reporting.

53. In the context of the armed conflict, civilians were targeted by shelling and other forms of military activity resulting in death and injury, and prisoners of war were badly mistreated and in all likelihood executed in flagrant violation of international humanitarian law.

54. The fact that thousands are still missing is a matter of great concern. It has not been possible to verify reports that they are being held in detention.

55. There is clear evidence that people were physically assaulted with many credible accounts of them being pushed, kicked and beaten, at times brutally.

56. There were many instances of inhuman and degrading treatment of the population.

57. There was a complete disregard for the mental suffering caused by the expulsion of the population from Srebrenica, particularly with reference to the heedless destruction of ties of family, friendship and community.

58. There are credible reports of looting and destruction of Muslim property after the fall of Srebrenica.

59. There is an indication that reprisal attacks have taken place against Serbian civilians residing in Tuzla by Muslim displaced persons from Srebrenica.

K. Recommendations

60. It is vital that investigations continue and for this purpose access to territories held by the Bosnian Serb de facto authorities must be granted immediately. Information derived from all military intelligence sources relevant to revealing violations of international humanitarian law should be made available to competent United Nations bodies and in particular the International Criminal Tribunal for the former Yugoslavia.

61. The Bosnian Serb de facto authorities should immediately account for the thousands reportedly still missing.

62. Access to the detention facilities where these people are reportedly being held must be granted to the International Committee of the Red Cross.

63. The international community should make the utmost efforts to ensure that the right of the displaced to return in safety and dignity is secured.

64. The international community should provide immediate assistance and financial support to help the displaced rebuild their lives. Particular emphasis should be placed on the building of permanent settlements for these displaced people.

65. The local authorities in Tuzla should continue their efforts to ensure that the rights of the Serbian minority are adequately safeguarded.

66. There have been widespread accusations against UNPROFOR in Srebrenica which are not possible to verify owing to various constraints and obstacles. An investigation should be conducted under international supervision to verify these allegations.

II. THE CONCEPT OF "SAFE AREAS"

A. The development of the concept

67. The Special Rapporteur submitted to the Commission on Human Rights his first report on the situation of human rights in the territory of the former Yugoslavia on 28 August 1992 (E/CN.4/1992/S-1/10). In it, he focused strongly on the policy of ethnic cleansing being carried out mainly against Muslims and ethnic Croats in the territories of Bosnia and Herzegovina under the control of the Bosnian Serbs. Arguing that the displaced could indeed refrain from seeking refuge abroad if provided with sufficient food supplies and adequate medical care and, above all, if their security could be guaranteed, the Special Rapporteur in his second report recommended that the concept of security zones 6/ within the territory of Bosnia and Herzegovina should be actively pursued (E/CN.4/1992/S-1/10 of 27 October 1992, para. 25 (b)). The Special Rapporteur explicitly recommended the prompt establishment of security zones within Bosnia and Herzegovina in his report of 17 November 1992 (A/47/666, para. 142). A similar recommendation can be found in his report of 10 February 1993 (E/CN.4/1993/50, para. 269, recommendation 1 (b)) along with the recommendation that UNPROFOR should have the right to intervene in cases of human rights violations (para. 269, recommendation 1 (e).

6/ The possibility of creating a kind of internal safe haven for refugees was actively discussed in different forums at the time. The concept of "protected zones", was proposed by the International Committee of the Red Cross in late 1992; see, inter alia, Summaries of the humanitarian activities of the ICRC in the former Yugoslavia (Annual Reports - ICRC News) 1991 - July 1995, ICRC DP (1995) 6b, p. 9; "Saving lives" - ICRC special brochure, Geneva, April 1995, p. 7.

68. In his report of 5 May 1993 (E/CN.4/1994/3, para. 94 (c)), the Special Rapporteur, in response to Security Council resolution 819 (1993), recommended that the concept of safe areas be expanded and applied to other areas of Bosnia and Herzegovina, notably Gorazde and Zepa. The Special Rapporteur defined the purpose of the safe areas to be "to provide people with the food and medicines they needed in places where their security was guaranteed" (E/CN.4/1994/47 of 17 November 1993, para. 14).

69. The objective of the original "security zones", as proposed by the Special Rapporteur, was clearly to provide a temporary solution to the refugee dilemma. However, the Security Council in its resolution 819 (1993) of 16 April 1993, chose to establish a safe area in Srebrenica because of the constant attacks by Bosnian Serb paramilitary units against the civilians of the area. The safe area was to be "free from any armed attack or any other hostile act" (para. 12). Pursuant to this purpose, the Secretary-General was requested to take immediate steps to increase the presence of UNPROFOR in Srebrenica and its surroundings, the task being to monitor the humanitarian situation in the area (para. 15). Protection of the safe area was not mentioned. In resolution 824 (1993) of 6 May 1993 (para. 23), establishing the safe areas of Sarajevo, Tuzla, Zepa, Gorazde and Bihac, the Security Council declared its readiness to consider the adoption of any additional measures with a view to the full implementation of the resolution, which could be interpreted as a possible intention to fight attacks against the safe areas. In its resolution 836 (1993) of 4 June 1993, the Security Council decided to ensure full respect for the safe areas by extending the mandate of UNPROFOR to deterring attacks against the safe areas. The use of air power to support UNPROFOR in the performance of its mandate was authorized.

70. The possibility of further extending the concept of safe areas to encompass Maglaj, Mostar and Vitez was examined by the Secretary-General in his report of 11 March 1994 (S/1994/291), pursuant to Security Council resolution 900 (1994) UNPROFOR considered that step inappropriate as far as Mostar and Vitez were concerned, but that they might be feasible for Maglaj. The Security Council remained seized of the situation in Maglaj, but the town was never declared a safe area.

71. The concept of safe areas was thoroughly discussed by the Secretary-General in his report of 9 May 1994 (S/1994/555), pursuant to Security Council resolution 844 (1993). The Secretary-General's definition of the initial safe area concept was based on relevant Security Council resolutions defining the safe areas to be "areas free from armed attacks and from any other hostile acts that would endanger the well-being and the safety of their inhabitants and where the unimpeded delivery of humanitarian assistance to the civilian population would be ensured" (S/1994/555, para. 2). Considering events subsequent to the adoption of the resolutions establishing the safe areas, the Secretary-General concluded that "the effective implementation of the safe-area concept depends on the degree of consent by the parties on the ground" (para. 12). Further discussing the existing ambiguities concerning UNPROFOR's mandate in the safe areas, he concluded that the task was not to defend a geographically defined safe area, but to "protect the civilian populations of the designated safe areas against armed attacks and other hostile acts, through the presence of [UNPROFOR] troops and, if necessary, through the application of air power, in accordance with agreed

procedures" (para. 16). The Secretary-General's conclusion was that the safe area concept was "a temporary mechanism by which some vulnerable populations can be protected pending a comprehensive negotiated political settlement" (para. 30).

72. The Secretary-General has also repeatedly drawn attention to the shortcomings of the current safe areas concept. 7/ He believed that only negotiated agreements had a chance of being implemented. The Secretary-General further emphasized the need for the safe areas regime to be accepted by both parties (S/1994/1389, para. 41). He mentioned in his report of 1 December 1994 pursuant to Security Council resolution 959 (1994) that "the concept of safe area has been applied more effectively at Zepa and Srebrenica than in other areas. In these two areas, the parties to the conflict agreed upon a cease-fire, deployment of UNPROFOR troops, ad hoc demilitarization and other measures including, in particular, a clear delimitation of the safe area" (S/1994/1389, para. 3).

73. In his report of 30 May 1995 (S/1995/444), the Secretary-General pointed out that "UNPROFOR's ability to carry out its safe-area mandate and particularly to deter deliberate attacks on the areas has been severely limited by the inherent deficiencies of the safe-area regime" (para. 35). The Secretary-General blamed not only the Bosnian Serb forces for that situation but also the government forces for violating the status of safe areas. Examples were given in connection with Tuzla, Sarajevo and Bihac (para. 37).

74. The concept of safe areas thus developed in the understanding of the Security Council from being mere unprotected havens for refugees to being real refuges, where displaced persons and other civilians were supposed to be protected, by force if necessary, against the effects of the on-going war. Unfortunately for the inhabitants of the safe areas, the mere definition of these areas failed to protect them from the state of siege imposed by the continued attacks of the Bosnian Serb forces.

B. The implementation of the concept

75. The Special Rapporteur's recommendations concerning the establishment of safe areas within the territory of Bosnia and Herzegovina, were followed up in his sixth periodic report (E/CN.4/1994/110 of 21 February 1994). In that report he concluded:

> "The first safe area was not authorized until April 1993, almost six months after the Special Rapporteur had made his recommendation. The safe areas in Bosnia and Herzegovina, Sarajevo in particular, are for the most part drastically overcrowded, short of basic food and medical resources and subject to indiscriminate shelling and military attacks. To a large extent they have become 'safe' only on paper."

7/ See, inter alia, S/1994/1389 of 1 December 1994 and S/1995/444 of 30 May 1995.

76. The present analysis will focus on recommendations put forward in reports issued after February 1994 and on decisions and action taken to implement the concept of safe areas. Since the mere concept of safe areas, as it was understood by the Special Rapporteur, presupposes a protecting force, the recommendations with regard to UNPROFOR have been linked to those regarding the safe areas.

77. The Security Council was aware that the "safe areas" created by its decisions were not able to offer security to their inhabitants, and the Secretary-General in his reports warned about the lack of progress in this respect.

78. The situation in Gorazde resulted in the first use of close air support against Serb ground targets on 10 and 11 April 1994. The North Atlantic Treaty Organization (NATO) had already threatened to intervene in February 1994, declaring that non-compliance with the withdrawal of heavy weapons from a 20 kilometre radius from the centre of Sarajevo would result in the initiation of air strikes 10 days from 10 February 1994. The Secretary-General requested additional support from NATO, which declared an exclusion zone around Gorazde on 22 April 1994. 8/

79. Upon the recommendation of the Secretary-General, NATO declared additional exclusion zones around the safe areas of Zepa, Srebrenica, Bihac and Tuzla. 9/

80. The Security Council called for an end to any provocative actions, committed by whomsoever, in and around the "safe areas". It also strongly condemned the shelling and infantry and artillery attacks against the "safe area" of Gorazde, and demanded their immediate cessation. It called upon all those concerned to take all measures to ensure full respect for the status of the "safe areas" (Statement by the President, S/PRST/1994/14, 6 April 1994). The Security Council once again condemned the ongoing hostilities against the safe area of Gorazde in its resolution 913 (1994) of 22 April 1994.

81. The Security Council demanded the immediate conclusion of a cease-fire agreement by the Government of the Republic of Bosnia and Herzegovina and the Bosnian Serb party, in Gorazde and throughout the territory of the Republic of Bosnia and Herzegovina. It invited the Secretary-General to take the necessary steps to ensure that UNPROFOR would be able, within the limits of its available resources, to monitor the situation in Gorazde and the respect of any cease-fire and disengagement of the military forces in Gorazde. It demanded the withdrawal of Bosnian Serb forces and weapons to a distance to be agreed by UNPROFOR where they would cease to constitute a threat to the status of Gorazde as a safe area (Security Council resolution 913 (1994) of 22 April 1994).

8/ Report of the Secretary-General pursuant to resolution 908 (1994), S/1994/1067, 17 September 1994.

9/ Report of the Secretary-General pursuant to resolution 844 (1993), S/1994/555, 9 May 1994.

82. In his report of 10 June 1994 (E/CN.4/1995/4) issued after the April 1994 attacks on the safe area of Gorazde, the Special Rapporteur recommended once again that the safe areas be rendered secure and effective. The Special Rapporteur also endorsed the conclusions reached by the Secretary-General in his report of 9 May 1994 (S/1994/555), in which the Secretary-General held that the safe areas should be defined so that UNPROFOR might provide, within the limit of its resources under the "light option", effective and credible protection to the population within the area, meaning that due regard should be given to the densely populated parts of the safe areas. A strong UNPROFOR presence was urged to reduce the risks of further attacks and to monitor closely the treatment of the local Serb population.

83. The Security Council called upon all the Bosnian parties to cooperate with UNPROFOR in its efforts to ensure implementation of the resolutions on the safe areas. The Security Council demanded that all parties and others concerned show maximum restraint and put an end to all hostile actions in and around the safe areas. The Security Council requested the Secretary-General to update his recommendations on modalities of the implementation of the concept of safe areas and to encourage UNPROFOR, in cooperation with the Bosnian parties, to continue their efforts to achieve agreements on strengthening the regimes of safe areas (resolution 959 (1994) of 19 November 1994).

84. The Secretary-General emphasized the need to demilitarize the safe areas and establish a regime that would be in line with the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977 (S/1994/1389 of 1 December 1994).

85. In its resolution 998 (1995) of 16 June 1995, the Security Council demanded that the Bosnian Serbs ensure unimpeded access by land to Sarajevo. It also demanded that the parties respect fully the status of the safe areas and in particular the need to ensure the safety of the civilian population therein. The Security Council underlined the need for a demilitarization of the safe areas and their immediate surroundings, and encouraged the Secretary-General to intensify efforts aimed at reaching agreement on the modalities for demilitarization. The Security Council decided to authorize an increase of UNPF/UNPROFOR personnel by up to 12,500 additional troops (the rapid reaction force).

86. In its resolution 1004 (1995) of 12 July 1995, the Security Council demanded that the Bosnian Serb forces cease their offensive and withdraw from the safe area of Srebrenica immediately. The Security Council also demanded that the parties respect fully the status of the safe area of Srebrenica. It further demanded that all parties allow unimpeded access to Srebrenica for the United Nations High Commissioner for Refugees and other international humanitarian agencies. The Security Council requested the Secretary-General to use all resources available to him to restore the status of the safe area of Srebrenica, and called on the parties to cooperate to that end.

C. Concluding remarks

87. The safe areas established by the United Nations in Bosnia and Herzegovina could not be equated with a protected zone within the meaning

of international humanitarian law, since they have been based on an enforced demand for parties concerned to cease attacks against the area. 10/ What has happened is that a peace-enforcement concept was implemented as if it were merely a peace-keeping one.

88. The definition of the safe areas provided by the Secretary-General is the same as that provided by the Security Council in its resolutions. The safe areas were regarded as safe havens where the population was to be protected against the effects of the war, and against the war itself. It should be noted, however, that the areas in themselves were never intended to be protected. The first and foremost beneficiary of the safe areas has always been the civilian population. However such protection of the population could not be effectively granted without a clear definition of the area to be protected.

89. The Secretary-General has constantly emphasized the need to reach a negotiated agreement in relation to the safe areas. However, it is obvious that for the Bosnian Serb forces such an agreement was unacceptable since one of their strategic goals was to overrun the eastern enclaves of Srebrenica, Zepa and Gorazde. It has to be noted that negotiations concerning the respect of the safe areas that have been carried out by UNPROFOR with the parties on the ground have not been very successful. Significantly enough, an agreement was reached in relation to Srebrenica and Zepa. International observers never confirmed allegations that governmental forces conducted military activities from those two enclaves. And it was precisely Srebrenica and Zepa that became the victims of the Bosnian Serb forces. This proves that only a consistent enforcement approach could provide the inhabitants of those areas with the necessary protection.

90. As a result, the safe areas have been "safe" to a large extent only on paper. Throughout their existence, the "safe areas" have been targeted with varying intensity, which has inevitably produced suffering among the civilian population. Convoys with humanitarian aid have been blocked and medical evacuations have been carried out only with great difficulty.

91. The safe areas concept has not been implemented as recommended by the Special Rapporteur. Although safe areas have been created and UNPROFOR was given a mandate to protect them, the Security Council was extremely reluctant to authorize coercive action to deter attacks on them. The Council has also refrained from authorizing the additional troops deemed necessary by the Secretary-General to ensure the full implementation of UNPROFOR's mandate. 11/

10/ This opinion corresponds with that expressed by Yves Sandoz in "The establishment of safety zones", in Summaries of the humanitarian activities of the ICRC, note 1.

11/ Report of the Secretary-General pursuant to Security Council resolutions 982 (1995) and 987 (1995), S/1995/444, 30 May 1995, para. 64.

92. When discussing the concept of safe areas, it has to be remembered that the establishment of such areas should be considered as a temporary solution aimed at solving humanitarian and not political problems. That concept cannot be seen as a substitute for a permanent peace agreement.

93. Safe areas established in Bosnia and Herzegovina offered at least partial protection to a number of local inhabitants and displaced persons. Nevertheless, lack of determination on the part of the international community and prolongation of the war resulted in the collapse of that concept. The fall of Srebrenica and Zepa brought tragedy, loss of life and serious human rights violations to the inhabitants of those areas. At the same time, it seriously undermined the credibility of the Security Council, the Secretary-General and the whole United Nations system.

III. SZEGED MEETING

94. The Special Rapporteur approached the authorities of the Federal Republic of Yugoslavia on several occasions with a view to visiting the country and establishing an office in Belgrade, as frequently recommended by the Commission on Human Rights, most recently in paragraphs 36 and 46 of its resolution 1995/89. The latest request was expressed in a letter dated 28 April 1995 addressed to the Minister for Foreign Affairs, to which no reply was forthcoming. It should be noted that, although the Special Rapporteur was not granted permission to visit the country, the authorities of the Federal Republic of Yugoslavia, in a letter dated 12 June 1995, invited the High Commissioner for Human Rights to visit the country with a view to acquainting himself with the human rights situation there.

95. Based on that lack of permission from the Federal Republic of Yugoslavia, the Special Rapporteur approached the representatives of local non-governmental organizations (NGOs), in particular from Belgrade and Vojvodina, with a view to organizing a meeting in Szeged (Hungary). The meeting was intended to enable him to collect first-hand information on the human rights situation in the Federal Republic of Yugoslavia. It took place on 8 and 9 July 1995 with the participation of 32 representatives of NGOs. Other meetings concentrated on Kosovo and Sandzak were planned for a later date.

96. Prior to travelling to the meeting, the Special Rapporteur received information from multiple sources, including NGOs, intergovernmental organizations, United Nations agencies and individuals, as well as information collected by the Centre for Human Rights field offices. The main allegations contained in the documentation received were: irregularities in the judicial system, including lack of an independent judiciary; irregularities in citizenship law; discriminatory treatment based on ethnicity and nationality with particular reference to education and employment; impediments surrounding the activities of independent trade unions; restrictions on the freedom of the media and the dominance of the State-sponsored media; systematic suppression of cultural heritage; and deportation of citizens and individuals seeking refuge in the Federal Republic of Yugoslavia. During the Szeged meeting these allegations were further elaborated and substantiated. The Special Rapporteur was also informed that all NGO representatives present at the meeting were

strongly in favour of the sanctions against the Federal Republic of Yugoslavia being lifted due to the negative influence on the implementation of human rights in that country.

Judicial process

97. Serious irregularities in the judicial processes were reported in the documentation and at the Szeged meeting. It would appear that this situation is prevalent throughout the territories of the Federal Republic of Yugoslavia, examples of which are the trial of General Vlado Trifunovic and the arrest and detention of Mr. Vojislav Seselj.

98. General Trifunovic, former head of the Jugoslav National Army (JNA) located in Varazdin, Croatia, was reportedly sentenced to 11 years' imprisonment following two acquittals for the same offence. The judges who had acquitted him were said to have been removed from the judiciary shortly after the acquitting verdicts were delivered. The Federal Republic of Yugoslavia courts tried the General for failing to use the necessary degree of firepower and for accepting a cease-fire.

99. The arrest, on 3 June 1995, of Mr. Vojislav Seselj, the leader of the Radical Party, and several members of his organization is another example reported by some sources. The accused's parliamentary immunity was reportedly suspended in a manner incongruous with the spirit of the law. Further, there are reports alleging that the accused was mistreated by the police.

100. The situation in Kosovo is of particular concern with regard to arbitrary detention, excessive duration of pre-trial detention, police brutality during custody and the independence of the judicial processes. A definitive example in this respect is the judicial proceeding against 44 ethnic Albanian former police officers. These persons are charged with jeopardizing the territorial integrity of the State and associating for hostile activities (Yugoslavian Criminal Code, chap. 15, arts. 116 and 136). All had been taken into police custody in December 1994 and held in pre-trial detention until the investigations were concluded in February 1995. They were held more than the legally allowed 72-hour period without formal charges and were not informed of their legal right to counsel. On 6 March 1995 the indictments were issued. Those who requested counsel were denied this during the initial detention. Several sources indicate that the accused were subjected to physical abuse, degrading treatment and verbal harassment while in custody.

Citizenship law

101. The Special Rapporteur received reports about the serious discrepancies between the stated right to citizenship and the practical ability to obtain it, such that questions of eligibility and appeal remain unclear.

102. Further, there is concern among those who participated in the Szeged meeting regarding the most recent version of the draft law on citizenship. Several versions of the draft law on citizenship have been under discussion since 1993. The most recent, if passed and implemented, would appear to give the Ministry of the Interior the discretionary right to determine the status

of citizenship of an individual, including the right to review and revise citizenship acquired during the time of the Socialist Federal Republic of Yugoslavia.

103. Other problems related to citizenship include that of mixed marriages and uncertainties in the procedure for acquiring citizenship of the Federal Republic of Yugoslavia for nationals of former Yugoslav Republics which are not part of the Federal Republic of Yugoslavia.

Independent trade unions

104. Members of independent trade unions experience discrimination, which was previously addressed in the report (E/CN.4/1995/57, para. 88). According to one source, there are cases of trade-union members being dismissed from their work owing to their union activities. An example of this is the firing of two members of the industry trade union in Aleksinac. According to other sources, in February 1995 three individuals were summoned to the police station in Mitrovica for questioning about participants in a miners' strike. A concern expressed by the trade unionists is the legislation regulating their activities; the Law on Strikes prohibits strikes in the public services.

Freedom of the media

105. The media in the Federal Republic of Yugoslavia is said to have remained predominantly under the control of the State. This is allegedly achieved through dismissing journalists, limiting paper supply, and restricting licences and distribution. The main television networks are State owned and operated. The dismissal of the editorial staff of Borba, a Belgrade daily newspaper, exemplifies the situation. As a result of the dismissals, the editorial staff established Nasa Borba which is located in the office of the Independent Trade Union owing to the impossibility of finding rented space of its own. The events surrounding the Borba incident were addressed in the report of the Special Rapporteur of 16 January 1995 (E/CN.4/1995/57, para. 90); there has been no apparent improvement in the situation.

106. The independent periodicals are also having difficulties purchasing a regular supply of paper. Paper for newsprint is produced only in Sremska Mitrovica by "Matroz", a State-owned firm. This enables the State to control the distribution of paper and it is alleged that the paper is supplied to periodicals that support the Government. Distribution is also a problem as it is allegedly monopolized by the journals supporting the State.

107. The Special Rapporteur has received information concerning the circumstances surrounding the Soros Foundation in Yugoslavia. The formal procedure for the registration of the Soros Foundation was reportedly not completed. This was used as the legal grounds on which the activities of the Soros Foundation were contested in court. The office continues to operate, but there are reports that its bank accounts are being blocked. Closure of this organization would have serious consequences for the media, especially the printed media. The Soros Foundation subsidizes the price of Nasa Borba and financially assists independent periodicals with the purchase of paper.

108. In Kosovo, journalists are harassed, arbitrarily detained and their equipment confiscated. A recent example of this, which has been reported by several sources, occurred on 27 June 1995 when an Albanian journalist and former editor of "Radio Pristina" was arrested in Pristina. His house was searched, and his passport and dictaphone were confiscated. In general, the authorities reportedly do not recognize any Albanian media association of journalists.

Discrimination against minorities with reference to education

109. Ethnic and national minorities remain dissatisfied with the educational system. The system of higher education appears to be dominated by the State, an example of such is the method of appointing rectors, which is alleged to be politicized. Rectors are chosen by a Commission whose members are in part nominated by State bodies.

110. At all levels of education there are reports that education in the mother tongue of the minorities is being systematically eliminated. The number of classes is being reduced and materials in the relevant language or concerning the relevant subjects are being restricted. In some cases, whole programmes are being physically moved to areas where there is little or no minority population. In the most serious cases, classes have been prohibited through police intervention, and teachers have been harassed and arrested by the police.

111. The situation of the Bulgarian minority does not appear to have improved since it was addressed in the report of the Special Rapporteur of 16 January 1995 (E/CN.4/1995/57, paras. 92-97). There have been complaints concerning pressure on pupils not to register Bulgarian as their mother tongue, the reduction in the Bulgarian curriculum and classes, and relocation of schools to towns without Bulgarian programmes. Four high schools in Dimitrovgrad were closed and the students relocated to Pirot, without additional Bulgarian programmes being provided at this location.

112. The Hungarian and Croat minorities also face difficulties in maintaining an education system acceptable to their culture. The Hungarian minority in Vojvodina claims that the number of schools offering a Hungarian curriculum has been reduced to an unacceptable level. An example of this is the relocation of the Subotica pedagogical institute to Sombor and the closure of the preschool in Rumenko. Further there is a lack of Hungarian history, literature, music, and geography in the curriculum of the remaining schools.

Suppression of cultural heritage

113. All minorities reportedly experience discrimination and violence against their cultural and religious institutions. There are claims that all the cultural monuments of the minorities in Dimitovgrad and Bosilgrad have been destroyed and no rebuilding is permitted. In April and May 1995, 12 incidents of violence were alleged to have occurred against Catholic clergy or their property. The Bulgarian minority states that it is prevented from obtaining cultural material through confiscation of material at the border. There are

reports that the use of the cyrillic alphabet is required in all official matters, and all court proceedings are dominated by Serbian language regardless of the language of those involved in the proceedings.

Forced mobilization of refugees

114. The Special Rapporteur received multiple reports of a large number of people being deported from the territory of the Federal Republic of Yugoslavia to the territories of the so-called Republika Srpska Krajina and the so-called Republika Srpska to be recruited by force to take part in military-type activities, in violation of article 33, paragraph 1, of the Convention relating to the Status of Refugees, and the Penal Code of the Federal Republic of Yugoslavia (art. 156, para. 1), concerning the kidnapping of persons under international protection.

115. The campaign is said to have begun on 11 June 1995, after the UNPROFOR hostage-taking and took place in all regions of the Federal Republic of Yugoslavia. Men from Bosnian Serb territories, whose refugee status was not regularized, constituted the bulk of those mobilized. However, there were some reports of men with citizenship of the Federal Republic of Yugoslavia and Muslims being mobilized as well. Two examples of citizens being mobilized are the cases of Dejan Mrdalj of Aleksinac, Serbia and Sasa Visatcki of Ruma, Serbia. Both of these individuals were said to have been in possession of documentation of citizenship of the Federal Republic of Yugoslavia, and Sasa Visatcki had completed his obligatory national service in the army of the Federal Republic of Yugoslavia.

116. Another example recently reported is that of Mr. Branko Licina, a citizen of the Federal Republic of Yugoslavia, who was drafted on 20 June 1995 from his home in Indija by the local police. He reported to his family from the Bihac pocket that he was attached to the military unit in the army of the so called Republika Srpska.

117. Upon receiving reports regarding the forced return of refugees the Special Rapporteur appealed, in a letter dated 22 June 1995, to the authorities of the Federal Republic of Yugoslavia to discontinue the practice. In a response addressed to the High Commissioner for Human Rights dated 17 July 1995, the Ambassador of the Federal Republic of Yugoslavia in Geneva, stated that as a result of the sanctions and the large number of refugees in the Federal Republic of Yugoslavia, criminal acts had been committed by individuals staying in the Federal Republic of Yugoslavia illegally. In that connection, the authorities were conducting an organized control of persons who were not citizens of the Federal Republic of Yugoslavia and who had failed to obtain refugee status. Further, the Ministry of Internal Affairs of the Republic of Serbia, issued a statement on 24 June 1995 according to which "a number, admittedly a small number of mistakes have been made in the establishment of identity and the implementation of measures, which is being corrected during control".

118. Regarding this statement, the mobilization of citizens has apparently ceased following an information campaign by human rights organizations. The

Ministry of the Interior is reportedly making a list of citizens of the Federal Republic of Yugoslavia who have been mobilized, and some have been able to return.

119. This situation is exacerbated by the reported inability of draft-aged men, many from mixed marriages, to regularize their refugee status regardless of the fact that their wives and children are able to do so. This problem was addressed in the report of the Special Rapporteur of 16 January 1995 (E/CN.4/1995/57, para. 83). There has been no apparent progress in this area.

Montenegro

120. According to the documentation received and accounts at the Szeged meeting, the human rights situation in Montenegro has improved somewhat. There is no indication of significant or systematic discrimination in Montenegro and the culture of coexistence appears to have survived the turmoil. The attitude of the authorities toward journalists appears to have improved. The obstruction of the only independent periodical in Montenegro, The Monitor, has ceased, as have threats to bomb its premises. None the less, there remain some questions regarding the treatment of members of the media by the judiciary. The Special Rapporteur was informed about the indictment and trial of journalists, as in the case of Mr. Bajovic of Belo Polje who, accused of separatism, was sentenced to six months in jail and is now on probation.

Tarcin detention facility in Bosnia and Herzegovina

121. The existence of a Bosnian Government-operated detention facility in Tarcin was brought to the attention of the Special Rapporteur during the Szeged meeting. Concern was expressed for the fate of the few hundreds of individuals who have been detained in the facility for three years. There were reports that the rights of the detainees provided for in the Geneva Conventions had not been observed and that none of those detained had been granted the right to judicial process. The local authorities require as a condition for release of these people, information on a similar number of Muslims who disappeared from the area during a Serbian offensive

Conclusions and recommendations

122. The Special Rapporteur considers the work and role of NGOs vital to the development of respect and protection for the human rights and the rights of the individual in the Federal Republic of Yugoslavia. The Special Rapporteur urges the Government to undertake measures to ensure that the work of NGOs on its territory is not obstructed.

123. The Special Rapporteur urges the Government of Bosnia and Herzegovina to release immediately all those detained in the Tarcin detention facility without access to a judicial process.

IV. GENERAL CONCLUSIONS ON THE MANDATE OF THE SPECIAL RAPPORTEUR

124. The mandate of the Special Rapporteur as defined by the relevant resolutions of the Commission on Human Rights contains a wide range of innovative elements which are not present in other similar mandates. In

particular, the Special Rapporteur was authorized to investigate not only human rights violations, but also violations of humanitarian law. He was requested to present as many interim reports as he deemed necessary. His reports were submitted not only to the Commission on Human Rights and the General Assembly but also to the Security Council and the International Conference on the former Yugoslavia, through the Secretary-General. A field operation was also established to support his mandate.

125. Nevertheless, the mandate of the Special Rapporteur had a serious disadvantage: one that is associated with mandates of special rapporteurs in general. The appropriate United Nations bodies, with the exception of the Commission on Human Rights, are not obliged to react to the recommendations of special rapporteurs. Of particular relevance to this mandate are the Security Council and the International Conference on the former Yugoslavia. Such a situation creates problems when one takes into consideration that the Commission meets only once a year as a rule. As a result the Special Rapporteur cannot effectively influence decisions and actions which can prevent violations of human rights. This problem is closely related to the position of the Commission within the United Nations system, which also reflects the role played by human rights within that system.

126. A mandate of that nature is not suited to addressing the kind of human rights violations which exist in Bosnia and Herzegovina. These violations require a quick response in order to defend basic human rights effectively. Therefore, the Special Rapporteur is of the opinion that the problem of the nature of mandates in countries which are in a state of war should be reconsidered.

127. The mandate of the Special Rapporteur as it stands can play a useful function in relation to other countries in the territory of the former Yugoslavia in which there are not military activities. In particular, it was noticeable that when Governments were ready to cooperate with the Special Rapporteur it was possible not only to act in order to help victims of human rights violations, but also to undertake intervention and preventive action.

128. An important role has been played by the human rights field operation. The operation should be strengthened and placed on a more stable financial footing. At the same time all United Nations bodies should cooperate in order to secure access of human rights monitors to all territories covered by the mandate of the Special Rapporteur. The United Nations should neither tolerate nor accept a situation in which the authorities are refusing to cooperate with human rights protection mechanisms established by the Commission.

129. The attitude of the responsible authorities towards the most fundamental human rights and to the relevant resolutions of the Commission and other United Nations organs should be considered as the most important test of their good faith. The degree to which parties concerned implement the decisions of the United Nations organs not only shows the commitment to the principles of international order, but is also an indicator of the credibility of the Organization.

Annex I

LETTER DATED 27 JULY 1995 ADDRESSED BY MR. TADEUSZ MAZOWIECKI TO THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS. 1/

Dear Mr. Chairman,

Events in recent weeks in Bosnia and Herzegovina, and above all the fact that the United Nations has allowed Srebrenica and Zepa to fall, along with the horrendous tragedy which has beset the population of those "safe havens" guaranteed by international agreements, oblige me to state that I do not see any possibility of continuing the mandate of Special Rapporteur entrusted to me by the Commission on Human Rights.

On accepting the mandate which was given to me for the first time in August 1992, I declared unequivocally that my goal would not simply be writing reports but helping the people themselves. The creation of "safe havens" was from the very beginning a central recommendation in my reports. The recent decisions of the London conference which accepted the fall of Srebrenica and resigned itself to the fate of Zepa are unacceptable to me. Those decisions did not create the conditions necessary for the defence of all "safe havens".

These events constitute a turning point in the development of the situation in Bosnia. At one and the same time, we are dealing with the struggle of a State, a member of the United Nations, for its survival and multi-ethnic character, and with the endeavour to protect principles of international order. One cannot speak about the protection of human rights with credibility when one is confronted with the lack of consistency and courage displayed by the international community and its leaders. The reality of the human rights situation today is illustrated by the tragedy of the people of Srebrenica and Zepa.

Human rights violations continue blatantly. There are constant blockades of the delivery of humanitarian aid. The civilian population is shelled remorselessly and the "blue helmets" and representatives of humanitarian organizations are dying. Crimes have been committed with swiftness and brutality and by contrast the response of the international community has been slow and ineffectual.

The character of my mandate only allows me to further describe crimes and violations of human rights. But the present critical moment forces us to realize the true character of those crimes and the responsibility of Europe and the international community for their own helplessness in addressing them. We have been fighting in Poland against a totalitarian system with a vision for the Europe of tomorrow. How can we believe in a Europe of tomorrow created by children of people who are abandoned today?

1/ A similar letter dated 27 July 1995 was addressed to the Secretary-General from Mr. Tadeusz Mazowiecki.

I would like to believe that the present moment will be a turning point in the relationship between Europe and the world towards Bosnia. The very stability of international order and the principle of civilization is at stake over the question of Bosnia. I am not convinced that the turning point hoped for will happen and cannot continue to participate in the pretence of the protection of human rights.

Mr. Chairman, please understand the motives behind my decision and convey them to the members of the Commission on Human Rights. I will submit my final eighteenth report based on my recent mission to Tuzla to the Commission in the near future.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

Tadeusz Mazowiecki
Special Raporteur on the situation
of human rights in the territory
of the former Yugoslavia

Annex II

LIST OF ALL PERIODIC REPORTS ON THE SITUATION OF HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA SUBMITTED BY MR. TADEUSZ MAZOWIECKI, SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS

1. **E/CN.4/1992/S-1/9** (28 August 1992) Covers the policy of ethnic cleansing as regards Bosnia and Herzegovina, Croatia, Serbia and Montenegro. Also concerns detention, executions, disappearances, factors contributing to the violations of human rights, and difficulties affecting the functioning of humanitarian organizations.	Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 14 of Commission resolution 1992/S-1/1 of 14 August 1992.
2. **E/CN.4/1992/S-1/10** (27 October 1992) Second visit to the former Yugoslavia. Annex I: programme of second visit; Annex II: Statement of Clyde Snow concerning mass graves.	Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 15 of Commission resolution 1992/S-1/1 of 14 August 1992.
3. **A/47/666-S/24809** (17 November 1992) Covers the general situation in Bosnia and Herzegovina, Croatia, and Serbia with specific reference to destruction of religious sites and rape as a feature of "ethnic cleansing"; other war crimes, and the humanitarian crisis.	Report on the situation of human rights in the territory of the former Yugoslavia prepared by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 15 of Commission resolution 1992/S-1/1 and Economic and Social Council decision 1992/305.
4. **E/CN.4/1993/50** (10 February 1993) Covers whole territory of former Yugoslavia with specific reference in Bosnia and Herzegovina to executions, arbitrary detentions, rape, and the situation of children, forced transfer of populations, attacks on non-military targets, and the humanitarian crisis; annexes refer to	Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992.

extrajudicial, summary or arbitrary executions and report of team of experts on their mission to investigate rape.	
5. **E/CN.4/1994/3** (5 May 1993) Covers "ethnic cleansing" of eastern enclaves, allegations regarding the government offensive of December/January 1993, forcibly displaced in east, forced recruitment, situation of Serbs in Tuzla.	Periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993.
6. **E/CN.4/1994/4** (19 May 1993) Covers "ethnic cleansing" by Bosnian Croat forces and arbitrary executions by Bosnia and Herzegovina Government forces in the Vitez area.	Second periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993.
7. **E/CN.4/1994/6** (26 August 1993) Covers the general situation in Sarajevo including the use of basic utilities as a weapon of war, the blocking of humanitarian aid, victimization of those in need of special respect and protection, and the rapid disintegration of the rule of law.	Third periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993.
8. **E/CN.4/1994/8** (6 September 1993) Covers the situation in Mostar including "ethnic cleansing", arbitrary arrest and detentions, and civilians as targets of military attacks.	Fourth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993. Mostar: the cause for concern
9. **E/CN.4/1994/47** (17 November 1993) Covers the situation in Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, with specific reference to arbitrary executions and "ethnic cleansing", arbitrary detention, citizenship,	Fifth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993.

evictions, destruction of property, the situation of the media, etc.	
10. **E/CN.4/1994/110** (21 February 1994) Covers the whole territory of former Yugoslavia, with special reference to the problem of disappearances, the situation of children, previous recommendations and their follow-up.	Sixth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993.
11. **E/CN.4/1995/4** (10 June 1994) Covers the situation in Gorazde.	Seventh periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 37 of Commission resolution 1993/7 of 9 March 1994. Situation in Gorazde
12. **E/CN.4/1995/10** (4 August 1994) Covers the situation in central Bosnia and the Mostar area, Sarajevo, Mostar, Bihac, activities of international agencies and organizations, areas under the control of Bosnian Serb forces, and The Former Yugoslav Republic of Macedonia.	Eighth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 37 of Commission resolution 1994/72 of 9 March 1994.
13. **A/49/641-S/1994/1252** (4 November 1994) Covers the general situation in Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, and The Former Yugoslav Republic of Macedonia.	Ninth periodic report on the situation of human rights in the territory of the former Yugoslavia, submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 37 of Commission resolution 1994/72 of 9 March 1994 and Economic and Social Council decision 1994/262 of 22 July 1994.

14. **E/CN.4/1995/54** (13 December 1994) Covers Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia, and The Former Yugoslav Republic of Macedonia, with specific reference to international activities.	Special report on the media Report of the Special Rapporteur submitted pursuant to Commission resolution 1994/72.
15. **E/CN.4/1995/57** (9 January 1995) Covers Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, The Former Yugoslav Republic of Macedonia, with special reference to disappearances and field operations.	Tenth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 37 of Commission resolution 1994/72 of 9 March 1994.
16. **E/CN.4/1996/3** (21 April 1995) Covers the situation in Banja Luka with specific reference to developments prior to and immediately following February 1995, including forced labour and departure procedures.	Periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 42 of Commission resolution 1995/89.
17. **E/CN.4/1996/6** (5 July 1995) Covers the situation in Western Slavonia following the 1 May 1995 Croatian offensive and the situation in Bosnia and Herzegovina, with specific reference to Sarajevo, violations occurring in safe areas, Banja Luka, central Bosnia and Herzegovina and Mostar.	Periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 42 of Commission resolution 1995/89 of 8 March 1995.

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